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Education for the Disadvantaged: ESEA Title I Reauthorization Issues

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Education for the Disadvantaged: ESEA Title I Reauthorization Issues

SUMMARY

Title I of the Elementary and Secondary Education Act (ESEA) authorizes aid to local educational agencies (LEAs) for the education of disadvantaged children. Title I grants are used to provide supplementary educational and related services to low-achieving children attending schools with relatively high concentrations of pupils from low-income families.

Title I has detailed provisions regarding allocation of funds, selection of schools, fiscal accountability, pupil assessment, program improvement, and parental involvement, but there are very few constraints on LEAs in selection of curriculum and staff, instructional approach, and other major aspects of Title I programs. Title I is essentially a “funding mechanism,” with encouragement, but no requirements, to employ any specific educational techniques or strategies.

Recent information on the effectiveness of Title I is based primarily on selected states and LEAs that have implemented standards-based reforms. While these results are generally positive, they may not be applicable to the program nationwide. Title I amendments adopted in 1994 attempted to improve effectiveness through greater targeting of funds on high poverty LEAs and schools; requiring states to adopt curriculum content and pupil performance standards, and assessments linked to these, for Title I students; a renewed focus on program improvement; and increased flexibility. The extent to which these major elements of the Improving America’s Schools Act have been implemented varies widely.

On January 8, 2002, the No Child Left Behind Act of 2001, a bill to extend and revise ESEA Title I, was signed into law as P.L. 107-

110. Highlights of P.L. 107-110 include: (a) all participating states will be required to implement standards-based assessments for pupils in each of grades 3-8 in reading and mathematics by the 2005-06 school year, and to develop and implement assessments at three grade levels in science by the 2007-08 school year; (b) all states will be required to participate in National Assessment of Educational Progress tests in 4th and 8th grade reading and mathematics to be administered every 2 years; (c) adequate yearly progress (AYP) standards, with a goal of all pupils reaching a proficient or advanced level of achievement within 12 years, will be applied to each public school, LEA, and state; (d) pupils at schools that fail to meet AYP for 2 consecutive years must be offered public school choice options, and if a school fails to meet AYP for a third consecutive year, pupils from low-income families must be offered the opportunity to receive instruction from a supplemental services provider of their choice; (e) “corrective actions” must be taken with respect to schools that fail to meet AYP for 4 consecutive years, and those that fail for 5 consecutive years must be “restructured”; (f) Title I allocation formulas are modified to increase targeting on high poverty states and LEAs under the Education Finance Incentive Grant formula, move Puerto Rico gradually toward parity with the states, and increase state minimum grants; (g) states must ensure that all of their teachers are “highly qualified” by the end of the 2005-06 school year; (h) within 4 years, all paraprofessionals paid with Title I funds must have completed at least 2 years of higher education or met a “rigorous standard of quality”; and (i) the authorization level for Title I-A is \$13.5 billion for FY2002, increasing to \$25 billion for FY2007.

MOST RECENT DEVELOPMENTS

On January 8, 2002, the No Child Left Behind Act of 2001, a bill to extend and revise ESEA Title I, was signed into law as P.L. 107-110.

On January 10, 2002, FY2002 appropriations legislation for ESEA Title I was signed into law. P.L. 107-116 provides for the allocation of \$1,018 million as Title I Targeted Grants and \$793 million as Education Finance Incentive Grants, within a total FY2002 appropriation for Title I, Part A of \$10.35 billion.

BACKGROUND AND ANALYSIS

Introduction

Title I, Part A, of the ESEA authorizes federal aid to local educational agencies (LEAs) for the education of disadvantaged children. Title I grants provide supplementary educational and related services to low-achieving children attending schools with relatively high concentrations of pupils from low-income families in pre-kindergarten through grade 12. Title I is the largest federal elementary and secondary education assistance program, with services provided to approximately: (a) 90% of all LEAs; (b) 45,000 (58% of all) public schools; and (c) 11 million (22% of all) pupils, including approximately 167,000 pupils attending private schools. Four-fifths of all participating pupils are in pre-kindergarten through grade 6, with only 5% of participants in grades 10-12. The 106th Congress extensively considered bills that would have reauthorized Title I, but no Title I reauthorization legislation was adopted, and this issue remained on the agenda for the first session of the 107th Congress, which has adopted the No Child Left Behind Act, P.L. 107-110 (described below).

Program Effectiveness

All of the *comprehensive* studies currently available on the effectiveness of Title I programs in improving the educational achievement of disadvantaged children are based primarily on the program as it existed *before* substantial changes incorporated in the 1994 amendments began to be implemented; therefore, these studies are of very limited relevance to the current program. The most current information on the achievement of Title I participants comes from the Department of Education's (ED) 1999 report, *Promising Results, Continuing Challenges: Final Report of the National Assessment of Title I*. This report examined recent achievement trends in six states, a separate group of 13 large urban LEAs, and a representative sample of high poverty schools serving 4th grade pupils. While the results for high poverty schools are based on a nationally representative sample of such schools, the states and LEAs examined include only a selection of areas that have had standards-based reforms (curriculum content standards, pupil performance standards, and assessments linked to these) in place for at least 3 years. It cannot be assumed that results for these selected states and LEAs are representative of either current Title I performance nationwide or performance in all states and LEAs when they reach a similar stage of implementing standards-based reforms.

The major findings of the 1999 *National Assessment* report include the following:

- The average achievement of students in high-poverty elementary schools increased between 1995 and 1998 in 5 of 6 states in reading and 4 of 5 states in mathematics;
- The percentage of students in high-poverty elementary schools who met LEA or state performance standards in reading *and* mathematics increased between 1995 and 1998 in 6 of 13 large urban LEAs, and in reading *or* mathematics in 10 of these LEAs; and
- The average reading and mathematics achievement of a national sample of 9 year old pupils in high poverty schools increased between 1992 and 1996, but the 1996 achievement level in reading is no higher than in 1990.

When considering the effectiveness of Title I programs, it is important to note that while the aggregate effectiveness of Title I programs may be modest, a number of local programs are especially effective in serving disadvantaged children, and most of these are dependent on Title I funds. Further, it is very difficult for a supplementary program, such as Title I, to increase pupil achievement unless there are substantial improvements in pupils' *overall* instructional program, whether or not that schoolwide change is stimulated by Title I.

Since aggregate evaluation results combine local Title I programs with large differences in instructional methods and varying effectiveness, it may be more constructive to identify specific effective practices in Title I programs, rather than attempting to measure aggregate effects. The final report of ED's *Prospects* study, released in 1997, did attempt to identify effective practices. It found that high poverty schools that perform exceptionally well tend to have: Title I schoolwide programs that are based on well-implemented, comprehensive, and research-based school reform strategies; low rates of teacher and pupil mobility; very experienced principals; a balance of remedial and more challenging curriculum and instruction; and high levels of parent and community support and involvement.

Legislation in the 107th Congress

Highlights of the No Child Left Behind Act of 2001, P.L. 107-110

On January 8, 2002, the No Child Left Behind Act of 2001, a bill to extend and revise ESEA Title I, was signed into law as P.L. 107-110. Major ESEA Title I-related provisions of this Act follow.

Pupil Assessment. P.L. 107-110 substantially expands current Title I assessment provisions. All participating states will be required to implement standards-based assessments for pupils in each of grades 3-8 in reading and mathematics by the 2005-2006 school year. States will also have to develop and implement assessments at three grade levels in science by the 2007-2008 school year.

Annual grants for assessment development would be authorized, and the states could delay administration (but not development) of the expanded assessments 1 year for each year

that minimum amounts are not appropriated for this purpose (the minimum is \$370 million for FY2002).

All states will be required to participate in National Assessment of Educational Progress (NAEP) tests in 4th and 8th grade reading and mathematics to be administered every 2 years, with costs to be paid by the federal government. The bill will require pupils who have been in U.S. schools for at least 3 years to be tested (for reading) in English, and require states to annually assess the English language proficiency of their limited English proficient (LEP) pupils.

P.L. 107-110 requires assessments to be of “adequate technical quality for each purpose required under [this] Act,” and authorizes grants for the development of enhanced assessments. The Department is to contract with an independent organization for a study of the assessments and accountability policies used by states to meet Title I requirements.

By the 2002-2003 school year, assessment results and certain other data for individual public schools, LEAs, and states overall must be reported to parents and the public through “report cards.” These report cards are to include information on pupil performance disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged.

Adequate Yearly Progress Requirements. Current requirements for state-developed standards of adequate yearly progress (AYP) are substantially expanded in scope and specificity. Such standards will now have to be applied specifically to economically disadvantaged pupils, LEP pupils, pupils with disabilities, and pupils in major racial and ethnic groups, as well as all pupils, in each public school, LEA, and states overall. They will have to incorporate a goal of all pupils reaching a proficient or advanced level of achievement within 12 years.

A “uniform bar” approach will be employed: states are to set a threshold percentage (of pupils at proficient or advanced levels) each year that is applicable to all pupil subgroups. The “uniform bar” must generally be increased once every 3 years, although in the initial period it must be increased after 2 years. The minimum level for the “uniform bar” in the initial period is to be based on the greater of the percentage for the lowest-achieving pupil group or the threshold percentage for the lowest-performing quintile of schools statewide in the base year. Averaging of scores over 2-3 years is allowed. Under a “safe harbor” provision, a school that does not meet the standard AYP requirements may still be deemed to meet AYP if it experiences a 10% reduction in the gap between 100% and base year for pupil groups that fail to meet the “uniform bar.”

Corrective Actions. Schools that fail to meet AYP for 2 consecutive years must be identified as needing improvement; technical assistance is to be provided and public school choice must be offered to their pupils by the next school year (unless prohibited by state law). LEAs are generally required only to offer public school choice options within the same LEA; however, if all public schools in the LEA to which a child might transfer have been identified as needing improvement, then LEAs “shall, to the extent practicable,” establish cooperative agreements with other LEAs to offer expanded public school choice options.

If a school fails to meet the state AYP standard for 3 consecutive years, pupils from low-income families must be offered the opportunity to receive instruction from a supplemental services provider of their choice. States are to identify and provide lists of approved providers of such supplemental instructional services, which might include public or private schools or commercial firms, and monitor the quality of the services they provide. The amount spent per child for supplemental services is to be the lesser of the actual cost of the services or the LEA's Title I-A grant per poor and other children counted in the national allocation formula (approximately \$1,000 on average for FY2002). Transportation must be provided to pupils utilizing public school choice options. LEAs are to use up to 20% of their Title I funds for such transportation and supplemental services costs, although the grant to any particular school identified for corrective action or restructuring may not be reduced by more than 15%; LEAs are also authorized to use funds under the Innovative Education Program Strategies program (ESEA Title V-A) to pay additional supplemental services costs. States are also authorized to use funds they reserve for program improvement or administration under Title I-A, or funds available to them under Title V-A, to pay additional supplemental services costs. If insufficient funds are available to pay the costs of supplemental services for all eligible pupils whose families wish to exercise this option, LEAs may limit services to the lowest-achieving eligible pupils. The requirement to provide supplemental services may be waived if none of the approved providers offer such services in or near a LEA.

One or more of a specified series of "corrective actions" must be taken with respect to schools that fail to meet AYP for 4 consecutive years. These "corrective actions" include replacing relevant school staff, implementing a new curriculum, decreasing management authority at the school level, appointing an outside expert to advise the school, extending the school day or year, or changing the internal organizational structure of the school.

Schools that fail to meet AYP standards for 5 consecutive years must be "restructured." Such restructuring must consist of one or more of the following "alternative governance" actions: reopening as a charter school, replacing all or most school staff, state takeover of school operations (if permitted under state law), or other "major restructuring" of school governance.

Procedures analogous to those for schools are to apply to LEAs that fail to meet AYP requirements. Both an increased state reservation (rising from 0.5% currently to 4% by FY2004) and a separate authorization of funds (\$500 million for FY2002) are provided for school improvement grants.

ED will also establish a peer review process to evaluate whether states overall have met their statewide AYP goals. States that fail to meet their goals are to be listed in an annual report to Congress, and technical assistance is to be provided to states that fail to meet their goals for 2 consecutive years. Provisions for more extensive performance bonuses and sanctions for states, which were contained in the House- and Senate-passed versions of H.R. 1, are not included in the conference version.

Allocation Formula Provisions. In the allocation of Title I-A funds, P.L. 107-110 provides that an amount equal to the FY2001 appropriation would be allocated under the Basic and Concentration Grant formulas, and any increases would be allocated under an updated version of the Targeted Grant formula, or under a substantially modified version of

the Education Finance Incentive Grant (EFIG) formula. A hold harmless rate of 85-95% of previous year grants (the higher a LEA's child poverty rate, the higher is the hold harmless percentage), now applicable to Basic and Targeted Grants, will now apply to each of the four Part A allocation formulas. The Concentration Grant hold harmless provision will apply to all LEAs, not just those that currently meet the eligibility criteria for this formula, except that if a LEA fails to meet such criteria for 4 successive years, then the hold harmless would no longer apply.

The relative share of funds allocated to Puerto Rico will increase over time as a result of two P.L. 107-110 amendments. First, the minimum expenditure factor for Puerto Rico will be increased in stages to full parity with the minimum applicable to states (it is now approximately 75% of the minimum for states). Second, a cap on Targeted Grants to Puerto Rico is marginally raised.

State minimum grants are increased from up to 0.25% under current law to up to 0.35%, but only with respect to funds above the FY2001 level. P.L. 107-110 provides for the use of population data on school-age children in poor families that is updated annually, rather than every second year currently, although the Census Bureau does not now publish such data.

Finally, major changes are made to the EFIG formula.¹ In the allocation of funds to states, the population factor is changed from total school-age children to the same count of poor and other children used to calculate Basic Grants. Second, a variant of the state expenditure factor used in the other three Part A formulas would be added to the EFIG formula. Third, the EFIG formula will now have a distinct intrastate allocation formula, which is based on the Targeted Grant formula except that the degree of targeting will vary based on a measure of disparities in spending per pupil among each state's LEAs (the greater the disparities, the greater will be the degree of required targeting).

Staff Qualifications. P.L. 107-110 requires LEAs participating in ESEA Title I-A to ensure that, beginning next school year, teachers hired with Title I-A funds are "highly qualified." In addition, participating states must establish plans providing that all public school teachers statewide in core academic subjects meet the bill's definition of "highly qualified" by the 2005-2006 school year. LEAs are to use between 5% and 10% of their Title I-A grants in FY2002-2003, and at least 5% of their grants thereafter, for professional development activities.

In addition, all paraprofessionals newly hired with Title I funds after the date of enactment of P.L. 107-110, and within 4 years of the date of enactment, all paraprofessionals paid with Title I funds must have completed at least 2 years of higher education or met a "rigorous standard of quality" established by their LEA. Exceptions are provided for paraprofessionals engaged in translation or parental involvement activities. The types of responsibilities to which paraprofessionals paid with Title I-A funds may be assigned are outlined; these include tutoring of eligible pupils, assistance with classroom management, parental involvement activities, translation, assistance in computer laboratories or library/media centers, or instruction under the direct supervision of a teacher.

¹ For additional details, see CRS Report RL31256, *Education Finance Incentive Grants Under ESEA Title I*, by David P. Smole.

Other Provisions Regarding Title I. P.L. 107-110 reduces the Title I schoolwide program eligibility threshold to 40%. P.L. 107-110 establishes new or expanded requirements for reporting to parents and the public on state, LEA, and school performance and teacher quality in schools. It expands the existing authority to use Title I funds for public school choice programs. It explicitly authorizes the Comprehensive School Reform program within Title I, as Part F, and a new School Dropout Prevention program as Part H.

The appropriations authorization level for Title I-A is \$13.5 billion for FY2002, increasing to \$25 billion for FY2007. Finally, P.L. 107-110 authorizes most LEAs to transfer up to 50% of their grants among a number of different ESEA programs; under this authority, LEAs could transfer funds *into*, but *not out of*, Title I-A.

Original Bush Administration Proposal

The original Bush Administration proposal for revision and reauthorization of the ESEA, “No Child Left Behind,” included the following major features relevant to ESEA Title I:

- **Expansion of pupil achievement tests.** The current Title I assessment requirements would be expanded substantially. These additional requirements would be part of ESEA Title I, but would be applicable to all public school pupils and schools. First, states would be required to adopt assessments in reading/language arts and mathematics for all pupils each year in grades 3-8. Second, standards and assessments (at three grade levels only, as in current law) must be developed and implemented in history and science, in addition to the current requirements for mathematics and reading or language arts. Third, states receiving Title I grants would be required to participate in NAEP 4th and 8th grade reading and mathematics tests, which would be administered annually (rather than participating voluntarily in tests administered once every 2-4 years currently).
- **Enhancement of pupil outcome accountability requirements.** Pupils attending schools that consistently fail to meet Title I AYP standards, or that are unsafe, would be given options to attend other public or private schools, or to obtain supplementary educational services from a provider of their choice. Bonus payments would be provided to especially successful states and schools. New or expanded requirements would be established for reporting to parents and the public on school performance and teacher quality. It would be required that standards apply specifically to the disadvantaged pupils in each school receiving Title I funds.
- **Extension of flexibility.** The Administration proposal included an optional “charter” status for states or LEAs, allowing program requirements to be waived in return for 5-year performance agreements (similar to the “Straight A’s” provisions of H.R. 2300 and S. 2 in the 106th Congress). In addition, the low-income pupil enrollment threshold for Title I schoolwide program eligibility would be reduced to 40%.
- **Establishment of new reading initiative.** ESEA Title I, Part B (William F. Goodling Even Start Family Literacy Program) would be amended to

authorize a new Reading First program to enhance reading and reading readiness instruction in preschool and early elementary grades.

P.L. 107-116 (H.R. 3061), FY2002 Appropriations

Under P.L. 107-116, total Title I, Part A funding for FY2002 is \$10.35 billion. This legislation provides initial funding of \$1,018 million for the Targeted Grant formula (described below), which was first authorized in 1994 but not previously implemented. It would also provide \$793 million to be allocated under the second Title I formula, a version of which was authorized first in 1994 but not previously funded — Education Finance Incentive Grants. In contrast to appropriations acts of recent years, P.L. 107-116 has no extraordinary hold harmless provisions.

Bush Administration Budget Request for FY2003

On February 4, 2002, the Bush Administration announced its budget request for ESEA Title I-A and other federal programs for FY2003. The Administration has requested a total of \$11.35 billion for Title I-A grants to LEAs for FY2003, an increase of \$1.0 billion (9.7%). All of the increased funds would be allocated as Targeted Grants; the amounts allocated under the other three formulas would remain the same as for FY2002.

P.L. 107-20 (H.R. 2216), FY2001 Supplemental Appropriations

Among other provisions, P.L. 107-20, the FY2001 Supplemental Appropriations Act, adds \$161 million in FY2001 appropriations for ESEA Title I, Part A. This is the amount necessary to fully fund the “greater of the two” provision of the FY2001 appropriations act for ED, P.L. 106-554 — see below for further information on this provision and the impact of the supplemental funding.

Legislation Enacted in the 106th Congress

P.L. 106-554 (H.R. 4577), Consolidated Appropriations Act 2001. P.L. 106-554 provides FY2001 appropriations of \$7,237,721,000 for Basic Grants (including \$225,000,000 in Accountability Grants for school improvement), \$1,364,000,000 for Concentration Grants, and \$210,000,000 for the Title I portion of the Comprehensive School Reform Program. P.L. 106-554 provided that each LEA and state would receive the greater of 100% of its FY2000 Basic and Concentration Grants, *or* its grants as calculated under the hold harmless and other provisions of the authorizing statute but based on the slightly lower total funding levels of \$6,883,503,000 for Basic Grants and \$1,222,397,000 for Concentration Grants. However, the total Title I, Part A appropriation provided by P.L. 106-554 was insufficient to pay these amounts, and ED initially reduced the greater of the two amounts for each LEA by approximately 2%. Subsequently, funds from the supplemental appropriation in P.L. 107-20 (see above) increased the grant to each LEA in the nation by approximately 2%.

In addition, P.L. 106-554 extends, in somewhat modified form, a requirement initiated in FY2000 appropriations legislation for LEAs to offer to pupils attending public schools in

need of improvement the option to enroll in different public schools within the same LEA (unless it is not possible, consistent with state and local law, to offer such choice options to all eligible pupils). P.L. 106-554 clarifies the intent of Congress that this requirement should apply to all LEAs receiving Title I, Part A grants, not just those that directly receive any of the separately-appropriated Accountability Grant funds. However, the FY2001 legislation exempts all LEAs in several small-population states (those receiving a minimum state grant under either the Basic or Concentration Grant formulas) from this requirement.

Selected Title I Issues

The following section provides a brief review of major issues that were debated during the reauthorization of Title I in the first session of the 107th Congress, and that will likely continue to be debated as the NCLBA is implemented.

Standards and Assessments

The IASA of 1994 required states participating in Title I to develop or adopt curriculum content standards, pupil performance standards, and assessments linked to these, at least in the subjects of mathematics and reading/language arts and for at least one grade in each of three grade ranges. In general, these standards must be applicable to Title I participants, as well as all other pupils in the state. These requirements were adopted in part to raise expectations that Title I participants would be required to meet challenging academic standards, and to link the program to standards-based reforms taking place in most states. Typically, such standards-based reform involves the establishment of explicit and “challenging” goals for state school systems, and alignment of curricula, assessment methods, pupil performance standards, teacher professional development, instructional materials, and other school system policies in support of the goals.

The deadline for adopting content and performance standards was the 1997-1998 program year, and for assessments was the 2000-2001 program year. States were given several years to meet these requirements because many of them were at an early stage of standards-based reform in 1994. ED has been reviewing “evidence” that state standards and assessments meet the requirements of the Title I statute (e.g., that assessments are linked to state content and pupil performance standards, that disabled and limited English proficient (LEP) pupils are assessed with appropriate accommodations, etc.), but is not considering the substance of state standards and assessments. As of April 8, 2002, 18 states have been fully or conditionally approved by ED as meeting all of these requirements of current law. For most of the remaining states (29), “timeline waivers” have been granted, to allow them to complete the process of developing and implementing necessary assessments over the next couple of years. “Compliance agreements” have been negotiated between ED and 5 states that are far from meeting these requirements. Two states (Iowa and Nebraska) are finding it difficult to set *statewide* standards for all pupils in all LEAs, and are attempting to develop hybrid systems that rely ultimately on state guidelines for locally selected standards.

While the Title I standards requirements *are* being implemented, and states are continuing to adopt standards-based reform strategies in general, the pace at which benchmarks have been met is slower than specified in the IASA, and it is not yet possible to

determine whether this strategy will improve the achievement of disadvantaged pupils. As is discussed above, the new NCLBA substantially expands the variety of assessments required to be administered in states participating in Title I.

Adequate Yearly Progress, Program Improvement, and Technical Assistance

The IASA expanded previous Title I program improvement provisions, requiring each participating school and LEA to conduct an annual review of its Title I program. A key concept embodied in these proposals is “adequate yearly progress” (AYP): state standards embodying expectations for increased academic achievement by all pupils.

As is described above, P.L. 107-110 extensively revises the provisions of Title I related to AYP. CRS analyses based on school-level pupil achievement data in three states — Maryland, North Carolina, and Texas — over the period of 1998-2000 indicate that between 21% and 60% of the public schools in these states would have failed to meet the AYP requirements in P.L. 107-110 for 2 consecutive years — the period after which schools would be identified as needing improvement.²

Both the IASA and the NCLBA also include provisions intended to provide technical assistance on effective practices, especially for schools or LEAs identified as needing improvement. These include the authorization for states to reserve a share of their Title I funds for program improvement grants, consolidation of regional technical assistance centers, school support teams and “distinguished educators” designated by the states, plus regional laboratories and research and development centers funded by the Office of Educational Research and Improvement (OERI). Nevertheless, concern has been expressed about the resources available to technical assistance providers and the effectiveness of their services. Ongoing questions include how to better identify and disseminate information about effective practices; and how to provide incentives for adoption of effective practices while maximizing state and local flexibility in carrying out Title I programs. There is sharp conflict between the desire to encourage the adoption of effective practices in Title I, and the equally strong desire to maintain and possibly increase state and local flexibility. Some of these concerns may be addressed in efforts during the 2nd session of the 107th Congress to consider OERI reauthorization legislation.

Schoolwide Programs and Other Forms of Flexibility

One of the most distinctive changes in Title I since 1994 has been the rapid growth of schoolwide programs, which currently account for approximately 45% of all Title I schools and 60% of Title I funds spent at the school level. Schoolwide programs may be viewed both as a mechanism to increase Title I’s focus on comprehensive schoolwide reform in high poverty schools, and as an example of increased flexibility at the school level. The IASA reduced the eligibility threshold for schoolwide programs from 75% to 50% low-income pupils in general, and the NCLBA has further reduced this threshold to 40%. The statute

² See CRS Report RS21094, *Adequate Yearly Progress Under ESEA Title I: Estimates for Three States Based on Specifications in H.R. 1 Conference Agreement*, by David P. Smole and Wayne C. Riddle.

allows the use of funds under most federal aid programs, not just Title I, on a schoolwide basis, if basic program objectives and fiscal accountability requirements are met.

The rationale for providing schoolwide program authority to relatively high poverty schools is that: (a) in such schools, *all* pupils are disadvantaged, so most pupils are in need of special assistance, and it seems less equitable to select only the lowest-achieving pupils to receive Title I services, and (b) the level of Title I grants should be sufficient to meaningfully affect overall school services in high poverty schools, since these funds are allocated on the basis of the number of low-income pupils in these schools. However, there is little direct evidence of the achievement effects of this expansion of schoolwide programs, and the NCLBA has reduced the eligibility threshold to a level that is approximately the national average percentage of pupils from low-income families (using the common measure of eligibility for free or reduced-price school lunch).

Waivers and Ed-Flex. In addition to schoolwide programs, legislation adopted initially in 1994 has authorized waivers of many Title I statutory and regulatory requirements — case-by-case waiver authority exercised directly by the Secretary of Education (ESEA Title XIV, Part D), and the delegation of waiver authority to SEAs under Ed-Flex. A large majority of these waivers have applied to requirements under Title I. Under the waiver authority exercised directly by ED, approximately one-half of the approved requests were for waivers of the Title I school selection requirements, and an additional one-fourth were to waive the minimum low-income pupil percentage for schoolwide program eligibility. The third major category of waivers granted by ED was for the requirement that SEAs adopt curriculum content and pupil performance standards plus related assessments for Title I programs. As for the Ed-Flex states, waivers of the minimum percentage of pupils from low-income families for schoolwide programs accounted for about two-thirds of all programmatic waivers granted by SEAs thus far. Amendments to Ed-Flex adopted in 1999 (P.L. 106-25) limit the ability of states to waive requirements regarding Title I school selection.

Proponents of the flexibility authorities argue that most of the schools affected have been only marginally below the standard thresholds for eligibility for Title I participation or schoolwide programs. In addition, supporters of increased flexibility argue that waivers can remove federal regulatory barriers to local reform and initiative. However, some question the value of increased flexibility if it is used largely to expand schoolwide program eligibility or to postpone deadlines for adoption of standards. In addition, while schoolwide programs offer a great deal of flexibility to use funds under not only Title I but also most other federal programs in ways that might not ordinarily be allowed, an issue arises as to whether schools with relatively low percentages of low-income pupils need or should have such flexibility.

Optional Flexibility Demonstration or Transferability Authorities or Proposals. A number of provisions have been adopted or considered that would allow most LEAs to transfer substantial shares of their funds among several ESEA programs, or would allow a limited number of states and LEAs to combine funds under several programs and use them for any purpose authorized under the ESEA (see CRS Issue Brief IB10066 for information on these new authorities in the NCLBA). However, while some flexibility proposals considered earlier in the 107th Congress might have had a significant impact on Title I, the only impact on Title I of the authorities that have been adopted in the NCLBA should be to potentially increase funding — the transferability authorities allow for the shifting of

funds into, but not out of, Title I, and the broader flexibility authorities do not involve Title I at all.

Ongoing questions for Title I regarding flexibility provisions include whether the authorities are being used in ways that are increasing the academic achievement of disadvantaged pupils; whether the accountability requirements are consistent with the increased flexibility; and whether there should be any further change in the eligibility threshold for schoolwide programs.

Greater Targeting of Funds on High Poverty LEAs and Schools, and Other Allocation Formula Issues

A number of studies have found that the poverty of a child's family is much more likely to be associated with educational disadvantage if the family lives in an area with large concentrations of poor families. The major elements of the IASA's strategy to increase the targeting of Title I grants included: (a) funding of the pre-existing Basic and Concentration grant formulas up to the FY1995 appropriation level, then use of new Targeted Grant or Education Finance Incentive Grant (EFIG) formulas to allocate appropriations in excess of the FY1995 level, (b) use of updated population data, (c) calculation of grants nationwide by LEA, rather than by county, beginning in FY1999, and (d) a shift of funds toward the highest poverty schools within LEAs. Until the adoption of FY2002 appropriations legislation (see the discussion of P.L. 107-116, above), the only major allocation changes provided in the IASA that were actually implemented were: (a) partial application of the Census population updates; (b) calculation of grants by ED on the basis of LEAs beginning in FY1999; and (c) somewhat increased targeting of funds on high poverty schools within LEAs. An ED study (*Study of Educational Resources and Federal Funding: Final Report*, August 2000) found that there has been virtually no change since 1994 in the targeting of Title I funds on high poverty LEAs, although there has been a significant shift in funds from low- to high-poverty schools within LEAs. However, as is discussed both above and below, the NCLBA and FY2002 appropriations legislation for Title I have re-emphasized the strategy of allocating future increases in Title I funds under either the Targeted or a substantially revised (and much more targeted) EFIG formula.

Grants to LEAs. Greater targeting of funds on high poverty LEAs was to be accomplished through use of a new Targeted Grant formula to allocate a share of post-FY1995 increases in Title I appropriations. The distinctive feature of this formula, in contrast to other Title I formulas, is that it would provide increased grants *per poor child* as the percentage or number of poor children in a LEA increases, reflecting an assumed increasing educational disadvantage associated with family poverty when poverty is concentrated in a locality. This was to be combined with a shift to calculating Title I grants by LEA, rather than by county, to better pinpoint high poverty LEAs wherever they may be located. While the calculation of grants by LEA was implemented beginning in the 1999-2000 school year, annual appropriations acts prevented use of the Targeted Grant formula, as well as a second new allocation formula adopted in 1994 that would reward states with relatively low expenditure disparities among their LEAs (the EFIG formula). However, recently adopted FY2002 appropriations legislation (P.L. 107-116) provides significant, first-time funding for the Targeted Grant formula (\$1,018 million) and a substantially revised version of the EFIG formula (\$793 million), overcoming the historical difficulty of providing funding for Title I formulas that substantially focus funds on high poverty areas, or of effecting significant

changes of any kind in the Title I formulas. Further, the Bush Administration has requested an additional \$1 billion in Targeted Grants for FY2003.

Population Updates. Better targeting of Title I grants on regions of the Nation with the highest rate of growth in poor school-age children was to be accomplished through use of updated population estimates for states, counties, and LEAs made available through a new Census Bureau program, if the data were deemed reliable by the Secretaries of Education and Commerce, as well as a National Academy of Sciences panel. This provision of the IASA has been implemented, although its effects have thus far been highly constrained by supplemental appropriations provided in FY1997, and 100% hold harmless provisions for both Basic and Concentration Grants in the FY1998-2001 appropriations acts. These were adopted in reaction to the unexpected scale and regional shifts in the first set of population updates, as well as an apparent pattern of declines in share of poor school-age children for a number of high poverty areas. However, FY2002 appropriations legislation for Title I-A includes no extraordinary hold harmless rates, so the lower (85%-95%) rates in the authorizing legislation will apply, allowing more funds to shift to LEAs and regions with growing shares of the nation's poor children.

School Selection. The IASA contained three provisions intended to focus funds within LEAs more on high poverty schools. First, while LEAs still have discretion, in general, to select the grade levels at which Title I services are offered, they are required to provide Title I services to any school, *no matter its grade level*, with a low-income pupil rate of 75% or more. A second set of amendments raised the low income pupil rate at which a school may be "automatically" selected for Title I from 25% to 35%, and deleted some options for school selection that had facilitated the spread of funds among schools in some LEAs. Third, the IASA also requires LEAs to allocate Title I funds among eligible schools solely on the basis of pupils from low income families, and specifies a minimum grant per low income child to each school. These amendments were intended to result in greater concentration of funds on each LEA's highest poverty schools. These provisions have been implemented in most LEAs, and as a result the percentage of high poverty schools receiving Title I grants has increased substantially, while the percentage of low poverty schools participating in the program has declined.

In spite of this modest increase in intra-LEA targeting, the Title I grants per low-income pupil are actually higher in low-poverty participating schools, many schools with high poverty rates continue to face severe difficulties, and there is continuing interest in providing more intensive assistance to these schools. Ongoing issues with respect to targeting of Title I grants include: What level of increased targeting on high poverty LEAs and schools is appropriate *and* feasible to implement? What will be the impact of the significant changes in the mix of Title I formulas in FY2002 appropriations legislation, as well as the NCLBA's revisions to the EFIG formula? What is the appropriate balance between use of the most up-to-date census data versus stability of grants to lower-growth states and LEAs?

Other Allocation Formula Issues. Due to the expenditure factor in the current allocation formulas, high spending states receive up to 50% more per poor school-age child than low spending states. The rationale for this factor is that it reflects differences in the cost of providing public education, and provides an incentive to increase spending. However, it is a spending, not a cost, index; it reflects ability and willingness to spend on public education as well as cost differences; it is crude (affecting all LEAs in a state equally); and the incentive

it provides to increase state and local spending for public education is relatively small. Major alternatives include either eliminating the factor or substituting a different expenditure factor, such as average teacher salaries.

Cost adjustment issues also have been raised regarding the federal poverty income thresholds. A 1995 National Academy of Sciences study (*Measuring Poverty: A New Approach*) recommended that the standard federal poverty measure incorporate a local cost of living adjustment, based initially on variation in housing costs, and take into consideration some of the benefits received by low-income families. Some have argued that the expenditure factor may be considered to be a cost of living adjustment for the poverty thresholds, albeit a very indirect one.

Other Issues

School Choice and Title I. Provisions for use of Title I funds to expand school choice options are currently somewhat limited. While funds are allocated on the basis of numbers of poor children, Title I is structured as a “school aid” program, focused on serving *concentrations* of disadvantaged pupils, not an “individual pupil aid” program. Appropriations legislation for FY2000 and FY2001 required states and LEAs to provide to pupils attending schools identified as performing inadequately the option of attending other public schools not so identified, unless it is impossible, consistent with state and local law, to accommodate such transfer requests. Under P.L. 107-110, LEAs are required to offer public school choice options to pupils attending schools in need of improvement or who have been victims of violent crime at school. In addition, schools that consistently fail to meet state standards of AYP will be required to offer to at least some of their pupils the option to receive ESEA Title I services from supplemental services providers — public or private (either non-profit or for-profit) entities other than the public school at which the pupil is enrolled.

Teacher Aides. Aides (or paraprofessionals) constitute approximately one-half of the staff hired with Title I funds, and their salaries constitute about 15% of Title I funds; aides are especially prevalent in many high poverty LEAs and schools. Aides whose salaries are paid with Title I funds provide a variety of instructional and non-instructional services in both schoolwide and targeted assistance programs. Some have criticized the performance of instructional duties by aides who often lack educational credentials and sometimes receive little supervision from classroom teachers. Others have questioned the appropriateness of using Title I funds to pay aides who perform duties that are not directly related to instruction. The IASA required teacher aides funded under Title I to be directly supervised by teachers, and in general to have a high school diploma or equivalent within 2 years of employment.

Under the NCLBA, all aides newly hired with Title I funds after the date of enactment of P.L. 107-110, and within 4 years of the date of enactment, all aides paid with Title I funds, must have completed at least 2 years of higher education or met a “rigorous standard of quality” established by their LEA. Exceptions are provided for paraprofessionals engaged in translation or parental involvement activities. The types of responsibilities to which paraprofessionals paid with Title I-A funds may be assigned are outlined; these include tutoring of eligible pupils, assistance with classroom management, parental involvement activities, translation, assistance in computer laboratories or library/media centers, or instruction under the direct supervision of a teacher.

LEGISLATION

Only bills on which legislative action occurs during the 107th Congress will be listed below.

P.L. 107-20 (H.R. 2216, Young)

2001 Supplemental Appropriations Act. Increases FY2001 appropriations for ESEA Title I, Part A by \$161 million. Signed into law on July 24, 2001.

P.L. 107-110 (H.R. 1, Boehner, *et al.*)

No Child Left Behind Act of 2001. Signed into law on January 8, 2002.

P.L. 107-116 (H.R. 3061, Regula)

Labor, Health and Human Services, Education, and Related Agencies Appropriations, 2002. Signed into law on January 10, 2002.

S. 1 (Jeffords, *et al.*)

Better Education for Students and Teachers (BEST) Act. H.R. 1 passed *in lieu* on June 14, 2001.

FOR ADDITIONAL READING

CRS Report RS21094, *Adequate Yearly Progress Under ESEA Title I: Estimates for Three States Based on Specifications in H.R. 1 Conference Agreement*, by David P. Smole and Wayne C. Riddle.

CRS Report RS20979, *Adequate Yearly Progress Under ESEA Title I: Possible Impact of H.R. 1 and Alternative Provisions in Three States*, by Wayne Riddle, Richard Apling, and David Smole.

CRS Report RL31035, *Adequate Yearly Progress Under the ESEA: Provisions, Issues, and Options Regarding House and Senate Versions of H.R. 1*, by Wayne Riddle.

CRS Report RL30621, *Aspects of Accountability in ESEA Title I and Other Education Proposals in the 106th Congress*, by Wayne C. Riddle.

CRS Report RL30742, *Assessment Requirements Under ESEA Title I: Implementation Status and Issues*, by Wayne Clifton Riddle.

CRS Report RS20311, *Comprehensive School Reform Program: Background and Issues*, by Wayne Riddle.

CRS Report RL31256, *Education Finance Incentive Grants Under ESEA Title I*, by David P. Smole.

CRS Report RL30492, *Education for the Disadvantaged: Allocation Formula Issues in ESEA Title I Reauthorization Legislation*, by Wayne Riddle.

CRS Report RL30491, *Education for the Disadvantaged: ESEA Title I Allocation Formula Provisions*, by Wayne Riddle.

CRS Report RL30942, *Educational Testing: Bush Administration Proposals*, by Wayne Clifton Riddle.

CRS Report RL30835, *Elementary and Secondary Education: Accountability and Flexibility in Federal Aid Proposals*, by Wayne Clifton Riddle.

- CRS Report RL30372, *ESEA Title I “Portable Grant” Proposals: Background and Issues*, by Wayne Riddle.
- CRS Report 98-676, *Federal Elementary and Secondary Education Programs: Ed-Flex and Other Forms of Flexibility*, by Wayne Riddle.
- CRS Report 98-945, *The Federal Migrant Education Program: An Overview*, by Patricia Osorio-O’Dea.
- CRS Report 97-848, *The Implications of Agostini v. Felton for the Provision of Title I Assistance to Nonpublic School Children*, by David Ackerman and Wayne Riddle.
- CRS Report 96-380, *Title I, Elementary and Education Act: Funding and Implementation Issues, 1995-1999*, by Wayne Riddle.
- CRS Report RL30782, *Where the Money Goes in Department of Education K-12 Programs*, by Wayne Riddle and Patricia Osorio-O’Dea.